

1 Scott H. Jacobs, SBN 81980
shjacobs@reedsmith.com
2 Lisa B. Kim, SBN 229369
lkim@reedsmith.com
3 REED SMITH LLP
355 South Grand Avenue, Suite 2900
4 Los Angeles, CA 90071-1514

5 Telephone: 213.457.8000
6 Facsimile: 213.457.8080

7 Attorneys for Defendant
WAL-MART STORES, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 JOEL LEEBOVE, individually and on
13 behalf of a class of persons similarly
situated,

14 Plaintiff,

15 vs.

16 WAL-MART STORES, INC., a
17 Delaware corporation;

18 Defendant.

Case No.: 13-01024 R(SHx)

**ORDER DENYING PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

Date: September 16, 2013

Time: 10:00 a.m.

Courtroom: 8

The Honorable Manuel L. Real

Action Filed: February 12, 2013

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

1 Plaintiff Joel Leebove's ("Plaintiff") Motion for Class Certification came on
2 regularly for hearing on September 16, 2013 at 10:00 a.m., in Courtroom 8, of the
3 above entitled court, located at 312 North Spring Street, Los Angeles, CA 90012-
4 4701. Eric Schreiber appeared on behalf of Plaintiff. Scott Jacobs and Lisa Kim
5 appeared on behalf of Defendant Wal-Mart Stores, Inc.

6
7 The Court, having considered Plaintiff's Motion for Class Certification and
8 supporting declarations, Defendant's Opposition and supporting declarations, and
9 Plaintiff's Reply, and upon counsels' representation that neither party wished to make
10 any argument not contained in the motion or opposition, and GOOD CAUSE
11 APPEARING, hereby orders as follows:

12
13 A class may be certified if all four requirements of Rule 23(a) and one of the
14 three subsections of Rule 23(b) are satisfied. In this case, plaintiff contends that
15 certification under Rule 23(b)(3) is appropriate. To meet the requirements of Rule
16 23(b)(3), common questions must predominate over any questions affecting only
17 individual members, and class resolution must be superior to other available methods
18 for the fair and efficient adjudication of the controversy. Amchem Products, Inc. v.
19 Windsor, 521 U.S. 591 (1997).

20 Common issues of fact and law predominate if they have a direct impact on
21 every class member's effort to establish liability on every class member's entitlement
22 to injunctive and monetary relief. Williams v. Mohawk Industries, Inc., 568 F.3d
23 1350 (11th Cir. 2009). In this case, individualized factual and legal questions relating
24 to whether the credit card used by the various class members was a business or
25 consumer card, and whether collecting the personal information was necessary for a
26 special purpose under California Civil Code § 1747.08(c)(4), predominate over
27 questions common to the class.

28 Plaintiff's sole claim for relief on behalf of himself and the putative class is

1 based upon Section 1747.08. Section 1747.08, by its terms, only prohibits collecting
 2 certain information from a cardholder. Section 1747.02 defines cardholder as a
 3 “natural person to whom a credit card is issued for consumer credit purpose or a
 4 natural person who has agreed with the card insurer to pay consumer credit
 5 obligations arising from the issuance of a credit card to another natural person.” In
 6 interpreting this language, the California Court of Appeal decided that the purpose for
 7 which the card was issued, rather than the way in which the card was used, was the
 8 relevant inquiry in classifying the card. Archer v. United Rentals, Inc., 195
 9 Cal.App.4th 807 (2011). Therefore, before liability could be established with respect
 10 to each class member, individualized proof regarding whether each class member’s
 11 credit card was issued as a consumer or as a business card would have to be produced.

12 Individual questions unique to each member in the proposed class with respect
 13 to whether Wal-Mart was justified in requesting the personal information pursuant to
 14 Section 1747.08(c)(4) also must be answered before liability can be established for
 15 each member. That section provides that the prohibition against collecting
 16 information does not apply if the personal identification information is required for a
 17 special purpose incidental but related to the individual credit card transaction,
 18 including, but not limited to, information relating to shipping, delivery, servicing, or
 19 installation of the purchased merchandise or for special orders. Cal. Civ. Code
 20 § 1747.08(c)(4). For example, plaintiff contends that the shipping subclass should not
 21 have been required under the law to furnish their phone numbers. Wal-Mart produced
 22 evidence that many delivery carriers require a customer phone number so that they
 23 can speak to the addressee if there is a problem completing delivery or if they need
 24 assistance locating or accessing the delivery address.

25 To determine whether a class member’s claim was barred under the special
 26 purpose exception for shipping, individualized findings regarding whether a phone
 27 number was, in fact, required for the purpose of shipping would need to be adduced.
 28 This would entail factual inquiries, including the type of products shipped, the carrier,

1 and the nature of the residence. It would also require a finding as to whether the
2 particular facts adduced satisfied the language of the statute.

3 Because questions common to the class do not predominate over questions
4 affecting only individual members, certification under Rule 23 is inappropriate, and
5 the motion to certify is denied.

6
7 DATED: October 4, 2013



8
9 _____
The Honorable Manuel L. Real

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
REED SMITH LLP
A limited liability partnership formed in the State of Delaware